



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

08-13-07
03:51 PM

Order Instituting Rulemaking on the Commission's Own
Motion to Assess and Revise the Regulation of
Telecommunications Utilities

R.05-04-005
(URF Phase II)

Rulemaking for the Purposes of Revising General Order
96-A Regarding Informal Filings at the Commission

R.98-07-038
(GO 96-A)

**OPENING COMMENTS COX CALIFORNIA TELCOM, L.L.C., DBA COX
COMMUNICATIONS, TIME WARNER TELECOM OF CALIFORNIA LP AND XO
COMMUNICATIONS SERVICES, INC. ON THE PROPOSED DECISION OF
COMMISSIONER CHONG ADOPTING TELECOMMUNICATIONS INDUSTRY RULES
(AGENDA ID #6847)**

I. Introduction.

Time Warner Telecom of California, LP (U-5358-C) ("TWTC") and Cox California Telcom, LLC, d/b/a Cox Communications (U-5684-C) ("Cox") and XO Communications Services, Inc. (U-5553-C) (collectively "Joint Commenters") hereby submit these opening comments on the Proposed Decision of Commissioner Chong in the above-referenced consolidated proceedings, identified as agenda item #6847 ("GO 96-B PD").¹ Joint Commenters generally support the GO-96B PD, and therefore, these comments focus on assuring that the proposed new advice letter procedures are made applicable to CLCs and IXC's and that all carriers may readily implement the new rules.

II. Proposed Changes to the GO 96-B PD.

URF Carriers, CLCs and IXC's. The GO 96-B PD includes numerous references to "URF Carriers," but this term is not used consistently throughout the document, and the definition in the proposed rules does not include CLCs and IXC's. In some instances, the term URF Carrier is used to refer to incumbent LECs named as respondents in the URF proceeding. For example, the GO-96B PD states: "In keeping with the Uniform Regulatory Framework, URF Carriers are no longer required to cost-justify their contracts (under the 2001 draft rules, cost justification was required to show that contracts for

¹ Joint Commenters are also filing a second set of comments concerning the Proposed Decision Agenda Item #6846 ("URF II PD").

tariffed services were above cost).”² But CLCs have not ever been required to cost-justify their contracts, and therefore, the reference of URF Carriers in this context would not be accurate. In other instances, URF Carrier is expressly defined to refer to ILECs, CLCs and IXC.³ While the GO 96-B PD (and the Proposed Decision issued in the URF proceeding) appear to address this issue by referring to URF Carriers as the four major ILECs, CLCs, and IXCs,⁴ this definition blurs the distinction between different types of carriers and implies that rules adopted in the URF were expressly intended to apply to CLCs and IXCs. Indeed, D.06-08-030 does not define the term “URF Carrier,” but generally devotes itself to lessening the regulatory burden on the ILECs -- AT&T, Verizon, SureWest and Citizens. The URF decision does not specifically indicate the universe of carriers that are covered or that should be defined as “URF Carriers.”

The Commission should clarify that the telecommunications rules are applicable to both “URF Carriers” (i.e. those ILECs covered by the URF decision except the rate-regulated ILECs (“GRC-LECs”), CLCs and IXCs. To recognize the distinction between the three types of carriers while assuring uniform treatment of each type of carrier for the streamlined advice letter provisions contained in new General Order 96-B, the Commission should include the following definition:

Competitive Local Exchange Carriers or Competitive Local Carriers (CLCs or CLECs) includes those Utilities, as defined in D. 95-07-054.⁵

Interexchange carrier (“IXC”) is a Utility that provides nondominant interexchange services.

To readily implement these definition, the Commission should replace, as applicable, the term “URF Carrier” throughout the GO 96-B PD and the proposed rules, with the term “Competitive Market Carriers” and make the proposed GO 96-B rules applicable to them. This would retain the underlying distinction between different types of carriers but make clear that same GO 96-B rules apply to them.

² GO 96-B PD, p. 9.

³ Id., p. 27.

⁴ GO 96-B PD, p. 27; URF PD, p. 6.

⁵ This was the original Commission decision that created CLCs as a class of carriers.

Detariffing Does Not Apply To Services that CLCs Obtain From ILECs. The final rules adopted in the new General Order 96-B must provide that services purchased by CLCs and IXC's from ILECs under tariff cannot be detariffed. The GO 96-B PD indicates, somewhat imprecisely, the services that cannot be detariffed by stating "services that were not considered within the scope of this proceeding, such as wholesale tariffs ... or other services for which we did not grant full pricing flexibility, cannot be cancelled by the advice letter procedure authorized in this proceeding."⁶ To be certain what services are *not* covered by the voluntary detariffing mechanism, the final decision must make clear that detariffing does not apply to tariffed services that ILECs sell to CLCs or IXC's. Such services include any both switched and special access services as neither service has been included in any URF decision to date.⁷ Joint Commenters recommend that Industry Rule 5 "Detariffed and Non-tariffed Service" be modified as follows:

An URF Carrier may cancel by advice letter any retail tariff currently in effect except for the following: Basic Service; 911 or e-911 service; a provision, condition, or requirement imposed by the Commission in an enforcement, complaint, or merger proceeding; a provision relating to customer direct access to or choice of an interexchange carrier; a service (such as Resale Service) not within the scope of services for which the Commission granted full pricing flexibility in Decision 06-08-030 (**including but not limited to all presently tariffed services purchased by CLCs or IXC's from ILECs**); or a provision pertaining to a Utility's obligations under state or federal law (such as California public policy surcharges or Carrier of Last Resort obligations).

Contract Filing Period. The third item that should be revised in the final decision is Rule 8.2.1 which contemplates that contracts for tariffed services be filed within 15 business days or be subject to penalties. The GO 96-B PD correctly concludes that the late filing of any such contract would not invalidate the contract or otherwise modify the effectiveness of such contract upon filing.⁸ Joint Commenters believe that the filing time for such contracts should be extended from 15 days to 30 days. There is a normal lag time between the execution of a tariffed service contract and its forwarding to the

⁶ GO 96-B PD, p. 58.

⁷ The definition of retail special access, whether there are wholesale equivalents and whether Phase II of URF actually contemplates the future regulatory treatment of special access are matters at issue and vigorously disputed in Phase II of this proceeding. *See e.g.* March 30, 2007 Reply Comments of Sprint Nextel and Time Warner Telecom California, LP. Likewise, the present switched access proceeding contemplates continued tariffing of switched access rates by all carriers, ILECs, CLCs and GRC LECs.

⁸ GO 96-B PD, p. 32.

regulatory offices of the carrier for filing with the Commission. Requiring filing within 15 days will, in some cases, require carriers to modify their processes and add additional expense. To allow for the inherent time lag without penalizing carriers for late filing, it is appropriate and consistent with current business practices to allow a 30-day period for filing tariffed contracts with the Commission. Neither the public interest nor any party's interests will be harmed by increasing this time interval.

Definition of New Service. The proposed definition of "New Service" for detariffed services in Rule 1.8 could be interpreted so broadly as to capture an existing feature or function that a carrier provides but that it wishes to offer in a different configuration. The definition of "new service" in proposed Rule 1.8 is as follows:

"New Service" means a service that is distinguished from any existing service offered by the Utility by virtue of the technology employed and/or features, functions, and means of access provided.

This definition is unworkable and will likely prove to be unnecessarily burdensome for carriers. For example, if a carrier currently provides a certain feature as part of a given detariffed service but wishes to offer the feature on an a la carte basis or in a different service bundle configuration, this rule would apparently require the carrier to file the feature as a "New Service." This type of rule is not consistent with the overall approach of the proposed rules or the uniform regulatory framework. Also, it is not clear what "means of access" is intended to address. Joint Commenters recommend that the Commission revise the definition of New Service as follows:

"New Service" means a service (i) that is distinguished from any existing service offered by the Utility by virtue of the technology employed; or (ii) includes features or functions not previously offered in any service configuration by the Utility.

Attestation for New Services. The difficulty in determining with certainty what may be a new service also extends to the requirements of proposed Rule 8.3(1) which requires a carrier to "attest" that the new service complies with applicable California Public Utilities Code ("PU Code") provisions and applicable consumer protection rules. This attestation requirement appears to be a holdover from the earlier consumer protection rules which the Commission eliminated when it stayed its 2004 consumer

protection decision, D.04-05-057.⁹ The Commission has never required a carrier to attest that its services, new or old, original or modified, comply with the consumer protection rules or sections of the PU Code. Such attestation is not relevant for the purpose of compliance with those rules or any other legal requirements. The introduction of an attestation requirement only adds a further unneeded layer of oversight determining whether carrier representatives made a mistake in their good faith attestation and would constitute an unnecessary sideshow in what the Commission is trying to achieve with the instant proposed decision. Specifically, the proposed rules provide necessary guidance to carriers on the advice letter filing process; such rules should not be drafted in such a way as to play “gotcha” with a carrier trying to file new services in good faith. As a result, proposed Rule 8.3 should be modified as follows:

Rule 8.3 New Service. An advice letter requesting approval of a New Service must indicate that the proposed service would:

- (1) not result in a degradation in quality of other service provided by the Utility submitting the advice letter; and
- (2) not be activated for a particular customer unless affirmatively requested by the customer.

Rule 5.3 Notice to Customers. The second part of Proposed Rule 5.3 states that a carrier may satisfy the notice requirement in Rule 5.3 by sending notice in a variety of formats, including “by email to a customer who receives bills from the carrier by e-mail.” Some customers elect to receive notices from a carrier via email but do not receive their bills via email. Joint Commenters recommend that the Commission clarify that notice may be sent via email to any customer that has elected to receive notices in such format.

III. Conclusion.

Joint Commenters recommend that the Commission modify GO 96-B PD as follows:

- Clarify that new GO 96-B applies to URF Carriers, CLCs and IXC and refer to those carriers collectively as “Competitive Market Carriers;”
- Confirm that ILECs may not detariff services offered to CLCs or IXCs;
- Extend the time period for filing contracts for tariffed services from 15 days to 30 days;

⁹

See D.05-01-058.

- Modify the definition of “New Service;”
- Eliminate the attestation requirement for New Services; and
- Clarify that notices may be sent via email to customers that wish to receive notices via email.

Dated August 13, 2007

Respectfully submitted,
/s/

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**DOCKET OFFICE
PROOF OF SERVICE**

I, Margaret L Tobias, the undersigned, hereby declare that, on August 13, 2007, caused a copy of the foregoing:

**OPENING COMMENTS COX CALIFORNIA TELCOM, L.L.C., DBA COX
COMMUNICATIONS, TIME WARNER TELECOM OF CALIFORNIA LP AND XO
COMMUNICATIONS SERVICES, INC. ON THE PROPOSED DECISION OF
COMMISSIONER CHONG ADOPTING TELECOMMUNICATIONS INDUSTRY RULES
(AGENDA ID #6847)**

in the above-captioned proceeding, to be served as follows:

- [X] Via email and US Mail to the Assigned Commissioner's Advisor
- [X] Via email and US Mail to the Administrative Law Judge
- [X] Via email and US Mail to the Administrative Law Judge Kotz
- [X] Via email to all parties, as set forth in the attached service list

Dated: August 13, 2007 at San Francisco, California.

/s/

Margaret L. Tobias

Proceeding: R0504005 - CPUC - PAC BELL, VER
Filer: CPUC - FRONTIER COMMUNICATIONS OF CALIFORNIA
List Name: INITIAL LIST
Last changed: August 9, 2007

Proceeding: R9807038 - PUC-GENERAL ORDER 96
Filer: CPUC - GENERAL ORDER 96-A
List Name: INITIAL LIST
Last changed: August 9, 2007

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